HIGH COURT OF UTTARANCHAL AT NAINITAL.

Second Appeal No. 04 of 2003

Ghur Singh S/O Shri Maha Singh,
R/O village Raighadi, Post Suwarkhal,
Patwari Kshetra Badrakhan Tehsil and district Champawat.

…. Appellant.

Versus

1. District judge, Champawat.
2. Prem Ballabh Rai, Gram Pradhan, village Raighadi, Post Suwarkhal, Patwari Kshetra Badrakhan, Tehsil and District Champawat.
3. State of Uttaranchal though Collector, Uttaranchal,
4. District Basic Education Officer, Chapawat.

….. Respondents.

Sri C.D. Bahuguna & Sri R.P. Nautiyal, learned counsel for the appellant.
Sri Nand Prasad, learned Standing Counsel for the respondent nos. 1, 2 & 4.

Date April 17, 2006.

Hon. B.S. Verma, J.

This Second Appeal has been preferred against the judgment and decree dated 27-11-2002 passed in Civil Appeal No. 4 of 2002 Ghur Singh Vs. Prem Ballabh Rai and others by the District Judge Champawat as well as judgment and decree dated 06-04-2002 passed by the Civil Judge (Senior Division) Champawat, in O.S. No. 28 of 2001, Ghur Singh Vs. Prem Ballabh and others, whereby the Suit of the plaintiff-appellant was dismissed and the appeal preferred by the plaintiff before the District Judge too was dismissed and the judgment and decree of the trial court were upheld.

The plaintiff-appellant Ghur Singh filed Original Suit No. 28 of 2001 against the defendants for the relief of permanent injunction for restraining them not to construct the school building illegal in Tok Chyula (Naula) and the defendants be directed to construct the school building at Tok Matiyal. After proceeding with the suit and recording evidence, the Trial Court has held that the suit has not been filed in the representative capacity, but it was filed by

the plaintiff in individual capacity, hence the suit was dismissed on the ground that the suit was barred in view of the provisions of Section 38 and 41 (J) of the Specific Relief Act. The plaintiff went up in appeal before the District Judge, which too was dismissed vide judgment and decree dated 27.11.2002.

The questions framed in the memo of Second Appeal are not substantial question of law. I do not find any infirmity in the judgment and decree of the trial court as well as in the judgment and decree passed by the District Judge. Moreover, no substantial question of law has arisen in the present appeal.

The learned Trial Court had rightly dismissed the suit that the plaintiff is not entitled to file the suit in respect of the disputed property. The appeal was also rightly dismissed by the District Judge.

There is no force in the Second Appeal. Accordingly the appeal is dismissed in-limine.

(B.S. Verma, J.)

RCP